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7 **UNITED STATES DISTRICT COURT**
8 **WESTERN DISTRICT OF WASHINGTON**
9 **AT SEATTLE**

10 MICHAEL KUNNEN, an individual,
11 Plaintiff,
12 vs.

13 ALLSTATE FIRE & CASUALTY
14 INSURANCE COMPANY, a foreign
15 corporation,
16 Defendant.

CASE NO. 2:23-cv-01958-TL

STIPULATED PROTECTIVE ORDER

NOTED FOR: APRIL 15, 2024

17 **1. PURPOSES AND LIMITATIONS**

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19 Discovery in this action is likely to involve production of confidential,
20 proprietary, or private information for which special protection may be warranted.
21 Accordingly, the parties hereby stipulate to and petition the court to enter the
22 following Stipulated Protective Order. The parties acknowledge that this
23 agreement is consistent with LCR 26(c). It does not confer blanket protection on
24 all disclosures or responses to discovery, the protection it affords from public
25 disclosure and use extends only to the limited information or items that are
entitled to confidential treatment under the applicable legal principles, and it does
not presumptively entitle parties to file confidential information under seal.

2. “CONFIDENTIAL” MATERIAL

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EMBER LAW_{PLLC}
1700 Seventh Ave, Suite 2100
Seattle, WA 98101
P. (206) 899-6816 F. (206) 858-8182

1 “Confidential” material shall include the following documents and tangible things
2 produced or otherwise exchanged:

3 [The parties must include a list of specific documents such as “company’s
4 customer list” or “plaintiff’s medical records;” do not list broad categories of
documents such as “sensitive business material”].

- 5 • Plaintiff’s medical records;
- 6 • Plaintiff’s personal financial records;
- 7 • Plaintiff’s business records;
- 8 • Any records that contain information about Plaintiff’s children;
- 9 • Allstate’s claim handling manuals, policies, and procedures.

10 3. SCOPE

11 The protections conferred by this agreement cover not only confidential material
12 (as defined above), but also (1) any information copied or extracted from
13 confidential material; (2) all copies, excerpts, summaries, or compilations of
confidential material; and (3) any testimony, conversations, or presentations by
parties or their counsel that might reveal confidential material.

14 However, the protections conferred by this agreement do not cover information
15 that is in the public domain or becomes part of the public domain through trial or
otherwise.

16 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

17 4.1 Basic Principles. A receiving party may use confidential material that is
18 disclosed or produced by another party or by a non-party in connection with this
case only for prosecuting, defending, or attempting to settle this litigation.
19 Confidential material may be disclosed only to the categories of persons and
20 under the conditions described in this agreement. Confidential material must be
stored and maintained by a receiving party at a location and in a secure manner
21 that ensures that access is limited to the persons authorized under this agreement.

22 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
23 otherwise ordered by the court or permitted in writing by the designating party, a
receiving party may disclose any confidential material only to:
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1 (a) the receiving party's counsel of record in this action, as well as
2 employees of counsel to whom it is reasonably necessary to disclose the
information for this litigation;

3 (b) the officers, directors, and employees (including in house counsel) of
4 the receiving party to whom disclosure is reasonably necessary for this litigation,
unless the parties

5 agree that a particular document or material produced is for Attorney's Eyes Only
6 and is so designated;

7 (c) experts and consultants to whom disclosure is reasonably necessary for
8 this litigation and who have signed the "Acknowledgment and Agreement to Be
9 Bound" (Exhibit A);

10 (d) the court, court personnel, and court reporters and their staff;

11 (e) copy or imaging services retained by counsel to assist in the duplication
12 of confidential material, provided that counsel for the party retaining the copy or
13 imaging service instructs the service not to disclose any confidential material to
third parties and to immediately return all originals and copies of any confidential
14 material;

15 (f) during their depositions, witnesses in the action to whom disclosure is
16 reasonably necessary and who have signed the "Acknowledgment and Agreement
17 to Be Bound" (Exhibit A), unless otherwise agreed by the designating party or
ordered by the court. Any person presented as a witness pursuant to Fed. R. Civ.
18 P. 30(b)(6) must sign the Acknowledgement and Agreement to be Bound before
being provided confidential material produced by another party. Pages of
19 transcribed deposition testimony or exhibits to depositions that reveal confidential
material must be separately bound by the court reporter and may not be disclosed
20 to anyone except as permitted under this agreement;

21 (g) the author or recipient of a document containing the information or a
22 custodian or other person who otherwise possessed or knew the information.

23 4.3 Filing Confidential Material. Before filing confidential material or
24 discussing or referencing such material in court filings, the filing party shall
confer with the designating party, in accordance with Local Civil Rule 5(g)(3)(A),
25 to determine whether the designating party will remove the confidential
designation, whether the document can be redacted, or whether a motion to seal or
stipulation and proposed order is warranted. During the meet and confer process,
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1 the designating party must identify the basis for sealing the specific confidential
2 information at issue, and the filing party shall include this basis in its motion to
3 seal, along with any objection to sealing the information at issue. Local Civil Rule
4 5(g) sets forth the procedures that must be followed and the standards that will be
5 applied when a party seeks permission from the court to file material

6 under seal. A party who seeks to maintain the confidentiality of its information
7 must satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the
8 party filing the motion to seal. Failure to satisfy this requirement will result in the
9 motion to seal being denied, in accordance with the strong presumption of public
10 access to the Court's files.

11 5. DESIGNATING PROTECTED MATERIAL

12 5.1 Exercise of Restraint and Care in Designating Material for Protection.
13 Each party or non-party that designates information or items for protection under
14 this agreement must take care to limit any such designation to specific material
15 that qualifies under the appropriate standards. The designating party must
16 designate for protection only those parts of material, documents, items, or oral or
17 written communications that qualify, so that other portions of the material,
18 documents, items, or communications for which protection is not warranted are
19 not swept unjustifiably within the ambit of this agreement.

20 Mass, indiscriminate, or routinized designations are prohibited. Designations that
21 are shown to be clearly unjustified or that have been made for an improper
22 purpose (e.g., to unnecessarily encumber or delay the case development process or
23 to impose unnecessary expenses and burdens on other parties) expose the
24 designating party to sanctions.

25 If it comes to a designating party's attention that information or items that it
designated for protection do not qualify for protection, the designating party must
promptly notify all other parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in
this agreement (see, e.g., second paragraph of section 5.2(b) below), or as
otherwise stipulated or ordered, disclosure or discovery material that qualifies for
protection under this agreement must be clearly so designated before or when the
material is disclosed or produced.

(a) Information in documentary form: (e.g., paper or electronic documents
and deposition exhibits, but excluding transcripts of depositions or other pretrial

or trial proceedings), the designating party must affix the word “CONFIDENTIAL” to each page that contains confidential material. If only a portion or portions of the material on a page qualifies for protection, the producing party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

(b) Testimony given in deposition or in other pretrial proceedings: the parties and any participating non-parties must identify on the record, during the deposition or other pretrial proceeding, all protected testimony, without prejudice to their right to so designate other testimony after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect confidential information at trial, the issue should be addressed during the pre-trial conference.

(c) Other tangible items: the producing party must affix in a prominent place on the exterior of the container or containers in which the information or item is stored the word “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection, the producing party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the designating party’s right to secure protection under this agreement for such material. Upon timely correction of a designation, the receiving party must make reasonable efforts to ensure that the material is treated in accordance with the provisions of this agreement.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any party or non-party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The parties must make every attempt to resolve any dispute regarding confidential designations without court involvement. Any

1 motion regarding confidential designations or for a protective order must include
 2 a certification, in the motion or in a declaration or affidavit, that the movant has
 3 engaged in a good faith meet and confer conference with other affected parties in
 4 an effort to resolve the dispute without court action. The certification must list the
 5 date, manner, and participants to the conference. The parties shall attempt to
 6 resolve each challenge in good faith within 14 days of the service of notice. A
 7 good faith effort to confer requires a face-to-face meeting or a telephone
 8 conference.

6 6.3 Judicial Intervention. If the parties cannot resolve a challenge without
 7 court intervention, the designating party may file and serve a motion to retain
 8 confidentiality under Local Civil Rule 7 (and in compliance with Local Civil Rule
 9 5(g), if applicable). The burden of persuasion in any such motion shall be on the
 10 designating party. Frivolous challenges, and those made for an improper purpose
 11 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
 12 expose the challenging party to sanctions. All parties shall continue to maintain
 13 the material in question as confidential until the court rules on the challenge.

12 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN 13 OTHER LITIGATION

14 If a party is served with a subpoena or a court order issued in other litigation that
 15 compels disclosure of any information or items designated in this action as
 16 “CONFIDENTIAL,” that party must:

16 (a) promptly notify the designating party in writing and include a copy of
 17 the subpoena or court order;

18 (b) promptly notify in writing the party who caused the subpoena or order
 19 to issue in the other litigation that some or all of the material covered by the
 20 subpoena or order is subject to this agreement. Such notification shall include a
 21 copy of this agreement; and

21 (c) cooperate with respect to all reasonable procedures sought to be pursued
 22 by the designating party whose confidential material may be affected.

23 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

24 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
 25 confidential material to any person or in any circumstance not authorized under
 this agreement, the receiving party must immediately (a) notify in writing the
 designating party of the unauthorized disclosures, (b) use its best efforts to

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 1700 Seventh Ave, Suite 2100
 Seattle, WA 98101
 P. (206) 899-6816 F. (206) 858-8182

1 retrieve all unauthorized copies of the protected material, (c) inform the person or
2 persons to whom unauthorized disclosures were made of all the terms of this
3 agreement, and (d) request that such person or persons execute the
4 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
5 A.

6 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE 7 PROTECTED MATERIAL

8 When a producing party gives notice to receiving parties that certain inadvertently
9 produced material is subject to a claim of privilege or other protection, the
10 obligations of the receiving parties are those set forth in Federal Rule of Civil
11 Procedure 26(b)(5)(B). This provision is not intended to modify whatever
12 procedure may be established in an e-discovery order or agreement that provides
13 for production without prior privilege review. The parties agree to the entry of a
14 non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

15 10. NON TERMINATION AND RETURN OF DOCUMENTS

16 Within 60 days after the termination of this action, including all appeals, each
17 receiving party must return all confidential material to the producing party,
18 including all copies, extracts and summaries thereof. Alternatively, the parties
19 may agree upon appropriate methods of destruction.

20 Notwithstanding this provision, counsel are entitled to retain one archival copy of
21 all documents filed with the court, trial, deposition, and hearing transcripts,
22 correspondence, deposition and trial exhibits, expert reports, attorney work
23 product, and consultant and expert work product, even if such materials contain
24 confidential material. An expert witness may retain one archival copy of that
25 witnesses' expert report and deposition transcript.

The confidentiality obligations imposed by this agreement shall remain in effect
until a designating party agrees otherwise in writing or a court orders otherwise.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated this Monday, April 15, 2024

FOX ROTHSCHILD LLP
/s/Bryan J. Case [with authority]
Bryan J. Case, WSBA #41781
Al Roundtree, WSBA #54851
Grace Wan, WSBA #61427

EMBER LAW PLLC and NUR LAW
PLLC
/s/Chance B. Yager
Chance B. Yager, WSBA #44384
1700 Seventh Avenue Suite 2100

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EMBER LAW PLLC
1700 Seventh Ave, Suite 2100
Seattle, WA 98101
P. (206) 899-6816 F. (206) 858-8182

1 1001 Fourth Avenue, Suite 4400
2 Seattle, WA 98154
3 P. (206) 634-3600
4 bcase@foxrothchild.com
5 aroundtree@foxrothschild.com
6 gwan@foxrothschild.com
7 Attorneys for Defendant

Seattle, WA 98101
P. (206) 468-9410
F. (206) 858-8182
chance@emberlaw.com
Omar Nur, WSBA #45195
9924 4th Avenue West
Everett, WA 98204
P. (425) 998-7040
omar@nurlaw.com
Attorneys for Plaintiffs

Counsel for Plaintiff and Counsel for Defendant hereby certify that they have met and conferred prior to the filing of their Proposed Stipulated Protective Order.

Dated this Monday, April 15, 2024

FOX ROTHSCHILD LLP
/s/Bryan J. Case [with authority]
Bryan J. Case, WSBA #41781
Al Roundtree, WSBA #54851
Grace Wan, WSBA #61427
1001 Fourth Avenue, Suite 4400
Seattle, WA 98154
P. (206) 634-3600
bcase@foxrothchild.com
aroundtree@foxrothschild.com
gwan@foxrothschild.com
Attorneys for Defendant

EMBER LAW PLLC and NUR LAW
PLLC
/s/Chance B. Yager
Chance B. Yager, WSBA #44384
1700 Seventh Avenue Suite 2100
Seattle, WA 98101
P. (206) 468-9410
F. (206) 858-8182
chance@emberlaw.com
Omar Nur, WSBA #45195
9924 4th Avenue West
Everett, WA 98204
P. (425) 998-7040
omar@nurlaw.com
Attorneys for Plaintiffs

1 PURSUANT TO STIPULATION, IT IS SO ORDERED

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the
3 production of any documents, electronically stored information (ESI) or
4 information, whether inadvertent or otherwise, in this proceeding shall not, for the
5 purposes of this proceeding or any other federal or state proceeding, constitute a
6 waiver by the producing party of any privilege applicable to those documents,
7 including the attorney-client privilege, attorney work-product protection, or any
8 other privilege or protection recognized by law. This Order shall be interpreted to
9 provide the maximum protection allowed by Fed. R. Evid. 502(d). The provisions
10 of Fed. R. Evid. 502(b) do not apply. Nothing contained herein is intended to or
shall serve to limit a party's right to conduct a review of documents, ESI or
information (including metadata) for relevance, responsiveness and/or segregation
of privileged and/or protected information before production. Information
produced in discovery that is protected as privileged or work product shall be
immediately returned to the producing party.

11 DATED: April 16, 2024

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14 Tana Lin
15 United States District Judge
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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare
5 under penalty of perjury that I have read in its entirety and understand the
6 Stipulated Protective Order that was issued by the United States District Court for
7 the Western District of Washington on [date] in the case of *Kunnen v. Allstate*
8 *Fire & Casualty Insurance Company, Case No. 2:23-cv-01958-TL*. I agree to
9 comply with and to be bound by all the terms of this Stipulated Protective Order
10 and I understand and acknowledge that failure to so comply could expose me to
sanctions and punishment in the nature of contempt. I solemnly promise that I will
not disclose in any manner any information or item that is subject to this
Stipulated Protective Order to any person or entity except in strict compliance
with the provisions of this Order.

11 I further agree to submit to the jurisdiction of the United States District Court for
12 the Western District of Washington for the purpose of enforcing the terms of this
13 Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action.

14 Date:

15 City and State where sworn and signed:

16 Printed name:

17 Signature:
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